

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3322 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANTIBHAI NANUBHAI PATEL & ORS

Versus

STATE OF GUJARAT & ORS

Appearance:

MR M.C. SHAH, Advocate with Mr. S.N.JARIWALA for petitioners

MR SV BACHANI, Advocate for Petitioners - Absent

MR PRASHANT G. DESAI, GOVERNMENT PLEADER
with MS. H.N. DEVANI, AGP for Respondents

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 19/09/97

ORAL JUDGEMENT

In this petition, since the original record of the writ petition was not traceable, the record has been reconstructed with the assistance of the learned Government Pleader, pursuant to the direction issued by

this Court on 19th August, 1997 and the matter has been heard.

2. The petitioners seek to challenge order of the Urban Land Ceiling Tribunal dated 14th December, 1989 at Annexure "F" to the petition dismissing the Appeal of the petitioners (Appeal No.164 of 1987) and confirming the order dated 27.8.87 of the Competent Authority declaring 26432 sq.mtrs. of land of the petitioners as excess vacant land, and the notice dated 21.2.1994 at Annexure "G" to the petition issued under Section 10(5) by the respondent No.2 seeking to take possession on 28.2.1994, claiming that they are not holding any excess land and that they are entitled to exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 in respect of Revenue Survey Nos. 80/2 and 91/1 of village Nana Varachha, Tal. Choryasi, Dist. Surat. A direction is also sought that the scheme put by the petitioners under Section 21(1) for the land bearing survey No.71 should not be cancelled and that the said land ought not to be considered in the holding of the petitioners.

3. At the hearing of this petition, the learned Counsel Mr. Jariwala, who alongwith learned Counsel Mr. Bachhani had filed this petition, has submitted that the papers were taken away from him by the petitioners. The learned Counsel Mr. Bachhani had, on an earlier occasion when the matter was called out on 27.8.1997 stated that he had appeared at notice stage and thereafter, his junior Mr.K.K.Trivedi had appeared at the time when rule was issued and then the papers were taken away by Mr. K.K.Trivedi, which fact is recorded in the order dated 27.8.97. An affidavit dated 12.9.1997 has been filed by Mr.Bachhani to this effect, in which it is stated that the papers were handed over to Shri Jariwala, the other Advocate on record. Mr. Jariwala has filed an affidavit stating that the papers were taken away from him as stated by him in his telegram dated 20th August, 1997 about one and a half years back, with a view to engage Mr. P.M.Thakkar. Mr. P.M.Thakkar, on being required by order dated 27.8.97, has filed a note dated 16.9.97, stating that having gone through his office record, he is unable to find any such matter in which he is said to have been engaged by the petitioners of this petition.

The petitioner No.2 is present and states that the other petitioner Kantilal has gone abroad. He has stated that he leaves the matter on the Court to render decision in this petition. Therefore, Mr. M.C.Shah, who was present representing Mr.Jariwala, was requested to

assist the Court in the hearing of this petition and he has been good enough to argue the petition for the petitioners.

It is contended for the petitioners that on survey No.71, already construction has taken place and 350 persons are at present residing. There is nothing on record to show that any such construction exists there. The learned Counsel is not in a position to show as to when such construction took place. The question involved in this petition is whether that land was rightly treated as part of the holding of the petitioners while computing vacant land at the relevant time and that cannot be decided on the basis of any subsequent unauthorised constructions.

It is contended by the learned Counsel for the petitioners that if the other two survey Nos. 80/2 and 91/2 were to be treated as agricultural land, then the question of obtaining any exemption under Section 20 in respect thereof would not arise. It is contended that these two parcels of land could not have been treated as vacant land since they were predominantly used for agricultural purposes.

4. The learned Government Pleader appearing for the respondent authorities contended that the petition filed in 1994 for challenging the impugned order made in 1989 was grossly delayed and should not be entertained. It was also submitted that notifications under Section 10(1) and 10(3) have been issued and the lands have vested in the Government free from all encumbrances. It is further argued that Appeal No. 141/94 was filed by the petitioner No.1 against the orders which are challenged in this petition. The petitioners having challenged the impugned orders before the Tribunal and having availed alternative and efficacious remedy are not entitled to maintain this petition. It is also stated that in the Appeal No. 141/94, which the petitioner had filed before the Urban Land Tribunal, a xerox copy of a certified copy of judgement said to have been delivered on 13.9.1995 in the present petition was produced, though the present petition has all along been pending and no such judgement was ever delivered. It was submitted that since no one except the petitioners were to benefit by filing a forged judgement in the name of this Court, these petitioners should be held to be persons who are not fit to carry the writ of this Court. It is submitted that it is because of the alertness of the Competent Authority and the Deputy Collector, Surat, who addressed a letter dated 21.4.1997 to the Government and endorsed to the learned

Government Pleader and the High Court a copy of which is placed on record, that it could be found out that no such judgement was delivered in this petition and that it was still pending. The learned Government Pleader submitted that therefore, enquiries were made and it was found that in the appeal which was filed against the impugned notice dated 21.2.1994 before the ULT, a xerox copy of a purported certified copy of judgement said to have been delivered in this writ petition on 13.9.95 was produced, on the strength of which the ULT remanded the matter by its order dated 23rd July, 1996, stating that keeping in view the decision of the High Court dated 13.9.95, the proceedings were closed and the subordinate authority was directed to proceed further as per the decision of the High Court. There is no dispute about the fact that no such decision was ever rendered by this Court and this petition has been pending as per the record of the High Court, the computer slip and also as per the record of the office of the learned Government Pleader and even according to the learned Counsel who appeared for the petitioners. Even the petitioner No.2 who is present, stated that he was not aware of the petition having been already decided. The learned Government Pleader therefore submitted that the petitioners are not fit persons to be entrusted with the writ of this Court and the petition should be dismissed on the ground that they have indulged in such malpractices.

5. It is clear that the petitioners are seeking to challenge the impugned order at Annexure "F" passed by the ULT, on 14.12.1989 in a petition, which has been filed in March, 1994. The challenge against the impugned order is therefore, grossly delayed and can never be entertained. Even the challenge against the order of the ULT in Appeal No. 810/84 which was filed against the order dated 30.3.84 by which the scheme under Section 21(2) was cancelled, is grossly delayed because that order was made on 21.11.87. The impugned orders were made in lawful exercise of the jurisdiction of the concerned authority and they are speaking orders made for valid reasons. Such belated challenge against these orders cannot be entertained by this Court in its writ powers. The challenge against the consequential notice at Annexure "G" would therefore fail.

6. The contention that in view of the pendency of the application under Section 20 of the Urban Land Ceiling Act, the lands in respect of which such application was made, could not have been declared as excess vacant land, is wholly misconceived. It has been

found by the ULT in its impugned order dated 14.9.89 that there was nothing on record to show that any such application was made in respect of survey Nos. 80/2 and 91/1, as alleged by the petitioners. It was found that both these survey Nos. were in the residential zone and on perusal of the record, there did not appear any application under Section 20 having been made. The Supreme Court in Darothi Clare Parreira V. State of Maharashtra and ors., reported in AIR 1996 S.C 2553, has in terms held that having regard to the scheme of the Act, it cannot be said that until the application under Sections 20 or 21 is considered and disposed of, the Competent Authority has no power to have the Notification under Section 10(3) vesting the excess land in the Government, published. Therefore, even on merits, the petitioners have no case at all. The petition therefore, deserves to be rejected and is hereby rejected. Rule is discharged with no order as to costs.

7. As noted above, it has been brought to the notice of this Court, which fact is also taken note of in the earlier orders of this Court dated 19th August, 1997 and 27th August, 1997, that though this matter has been pending and no hearing had taken place, nor any decision rendered until now, a decision dated 13.9.95 purported to have been delivered in this petition is falsely created and a xerox copy of a certified copy of that decision was produced before the ULT in Appeal No. 141/94. In that appeal, Advocate Mr.Jariwala had filed his appearance on 2.12.1994 (page 11 of the file of that Appeal before ULT). Later on Advocate Ms. Rannaben H.Patel had appeared (page 57 of the file of that Appeal before ULT). The original file of those proceedings was called for, by the earlier orders, which were made in this petition. The learned ULT and Ex-officio Secretary, Revenue Department who appeared before this Court, submitted communication dated 26th August, 1997, and placed on record therewith the original file of the appeal proceedings before him. In his said letter addressed to the Assistant Registrar, he has stated that on the day of hearing, Advocate Smt. Rannaben H. Patel, Advocate, remained present and submitted a xerox copy of the judgement dated 29.11.95 (being the date which is written in the xerox copy of the certified copy on its page 3 below the fake judgement where the words "By order of the Court, Sd/K.A.Master for Deputy Register" appear. That judgement is at pages 59 - 65 of the file of the ULT and is purported to have been delivered by me on 13.9.95. In fact no such judgement was ever delivered in this petition which was pending. The original record of the High Court judgements of the relevant period has been

perused and there was no such judgement delivered on that day.

The Registrar had, pursuant to the directions issued in this regard, submitted a report, in which it is stated that this petition was listed on 18.9.1995 before Hon'ble Mr. Justice A.N. Divecha, when the new sittings commenced. He has stated that the original petition was not traceable and he has identified the persons who were responsible for the custody of the papers in his report. He has stated that the record shows that the matter was pending and that no such decision was rendered on 13.9.95 nor had any one made an application for a certified copy of such judgement. It is also reported that the stamps used in the xerox copy of the certified copy do not appear to be genuine. It is thus clear that some one has created a xerox copy of a spurious judgement, which was never delivered. On the strength of a xerox copy of a spurious certified copy, the Tribunal has been misled into making the order dated 23rd July, 1996, which is on page 67 to 69 of the original file of the Tribunal. It is clear that this order has been passed on the strength of a fake judgement and therefore, ought not to be acted upon. The petitioners were the only persons who were to benefit by producing such spurious copy of the judgement, which was never delivered in this petition. That xerox copy shows the names of the Advocate Mr. S.V. Bachhani, as having appeared for the petitioner. Ms. Harsha Devani, Assistant Government Pleader's name is also shown as having appeared for the respondent authority before this Court. The learned Government Pleader and the said learned Assistant Government Pleader, who are present, have stated that this matter was never heard and at no point of time and that she had never appeared, as suggested in this forged document and that the matter had been all along pending.

In this view of the matter, a very serious situation has arisen. By the earlier orders dated 19.8.1997 and 27.8.1997 the petitioners were called upon to remain present, but only petitioner No.2 is present before this Court. He states that the petitioner No.1 has gone abroad. The Advocate Mr. S.V. Bachhani, who appeared before this Court on 27.8.1997 pursuant to the direction given in a notice, which was sent to him to remain present personally, had displayed peculiar ignorance about the whole episode. He stated before the Court that he did not know anything about the said judgement said to have been delivered on 13.9.95. He also stated that the petition never came up for final hearing. He stated that his junior Mr. K.K. Trivedi had

appeared when rule was issued and papers were handed over to Mr.S.N.Jariwala. Mr. S.N.Jariwala states that papers were taken away from him by the client. Ms. Rannaben H.Patel, who is also present pursuant to the earlier orders, stated that she appeared before the ULT in Appeal No. 141 of 1994 of the petitioner at a later stage on 31.5.1996 and that she is not aware of any such certified copy having been used in that appeal. She stated that she did not produce the said certified copy in that appeal and that the statement of the ULT and Ex-officio Secretary in his letter dated 26th Aug. 1997, which was shown to her to the effect that she had submitted the said xerox copy of the judgement, was not correct.

It is unfortunate that in a matter where a certified copy of a judgement was never issued by the High Court Registry since no such judgement was delivered, the ULT on the basis of a xerox copy of a fake judgement simply on its being attested by the Executive Magistrate Mr. R.D.Parmar had chosen to make orders on 23.7.1996 in Appeal No. 141 of 1994. The petitioners and their Counsel at all levels pleaded total ignorance. Xerox copy of the certified copy which was produced before the Tribunal shows on the third page (file page 65) that one R.D.Parmar had put his seal of office and signature on 3.1.96. He has filed his affidavit, pursuant to the earlier, order stating that he does not remember who had shown the certified copy to him while he attested the xerox copy of a certified copy. He has filed an affidavit admitting that he had affixed the original seal and put his signature on 3.1.96 on this xerox copy of a certified copy while attesting it. His signature is in original alongwith the seals which he has affixed. An Officer of the rank of Executive Magistrate ought to have known that he could not have attested a xerox copy of a judgement said to have been issued by the High Court. It is difficult to accept at this stage that all this has happened innocuously. It is also difficult to accept at this stage that the learned Advocates Mr. Jhariwala and Rannaben H. Patel who appeared before the Tribunal were not aware of this xerox copy of certified copy having been produced before the Tribunal. There was a clear mention of this judgement in the order which was passed by the ULT on its basis on 23.7.96 after Ms Rannaben H. Patel appeared on conducted the Appeal. A copy of that order was sent to all the concerned parties. It is therefore, impossible to accept that none of these persons had known anything about this fake judgement, which was produced before the Tribunal and which is in the original file of the Tribunal. The Advocates on record Mr. Bachhani and Mr. Jhariwala and Mr. K.K.

Trivedi who also appeared as junior of Mr. Bachhani nor their clerk Mr. Hasmukhbhai Patel seem to be coming out clean with correct facts and they have been evasive over such a serious matter.

One Kantilal Balmukund Patel, who has given his address as "Samvad", Parvati Nagar, Nana Varachha, Surat 395 006 has voluntarily appeared before the Court, stating that he had purchased a portion of this land from the petitioners. He stated in Court in presence of Ms Rannaben H. Patel that he had engaged Ms. Rannaben H. Patel, to appear before the ULT in the said Appeal No. 141/94. That file contains Vakalatnama dated 2.12.1994 of Shri Sunil N. Jariwala purported to have been signed by Kantilal Nanubhai Patel - i.e. the petitioner No.1 and it shows date 28.12.1994 in the left margin. This Vakalatnama is at page 11 of the file. The file also contains another Vakalatnama of Ms. Rannaben H. Patel dated 31.5.96 at page 57, which is purported to have been signed by the present petitioner No.1 Kantilal Nanubhai Patel. Immediately following her Vakalatnama is the copy of the judgement said to have been produced and which is in the file at pages 59 to 65. Then comes the order passed by the Tribunal on 23.7.1996 on the basis of the said fake judgement. In that order, it is recorded on the second page that this judgement was produced on behalf of the appellant.

The matter therefore, warrants a proper investigation by a responsible agency. The learned Government Pleader also submitted that this matter requires to be investigated by the CBI and all the culprits are required to be brought to book.

The matter has come to light because of the vigilant eye of the Competent Authority and Additional Collector, who informed the Government by his letter dated 21.4.97 that the Computer Information disclosed that this petition was pending and that it appeared that the xerox copy of the judgement said to have been given in Special Civil Application No. 3322/94 i.e. this petition (which was produced in that office), was not genuine. Such vigilance on the part of the concerned Officer is appreciated. However, it is unfortunate that the higher authority who dealt with the appeal should have acted on a xerox copy of the judgement of the High Court. Merely because that xerox copy was attested by the Executive Magistrate who was an officer of the Collectorate, it did not become a certified copy issued by the High Court. It is only the High Court Registry

which can issue certified copy of its judgements under Chapter XIII of the Gujarat High Court Rules, 1993 and no other authority can lend any authenticity to the judgements of the High Court. Certified copies of public documents can be given only by a public officer having the custody of that document in accordance with the provisions of Section 76 of the Indian Evidence Act, 1872 and therefore, it is intriguing as to how a xerox copy of judgement came to be attested by responsible officers and was noted upon by the Tribunal. The Tribunal therefore, ought not to have acted upon a xerox copy of the judgement purported to have been delivered by this Court and should have insisted on a genuine certified copy. The learned Government Pleader has stated that after earlier interim directions were issued in this petition in this regard, the Government has written to the Government Pleader on 18.9.97 that necessary steps are being taken for issuing circulars to all the Heads of the Departments and Officers not to act on mere xerox copies of the judicial pronouncements. The learned Government Pleader also states that necessary steps are being taken to initiate action against the concerned officers for attesting the xerox copy of a fake judgement.

As noted above, Mr. R.D.Parmar, Executive Magistrate, had attested the xerox copy which was produced in the Appeal. The other Officer Mr.S.N.Patel, who was a Deputy Mamlatdar has also stated in his affidavit that he had attested another such copy on the basis of the attestation made by Mr. R.D.Parmar. It appears that a xerox of the fake judgement attested by him was also produced in the office of Competent Authority and Deputy Collector and it is therefrom that the concerned officer suspected that it was not a genuine copy since the matter was shown to be pending in the High Court.

Under the above circumstances, the following directions are issued while dismissing the writ petition:-

1. The Central Bureau of Investigation will investigate into the offences which are committed by forging a judgement in the name of this Court on 13.9.95 in this petition i.e. Special Civil Application No. 3322/94, which is in the original file of the ULT Appeal No. 141/94, which has been produced before this Court under the forwarding letter dated 26th August, 1997 of Mr. N.C.Dave, who was, at the relevant time ULT and Secretary of the Revenue Department and at

present is Vice Chairman of GSRTC and by using this forged document before the ULT and similar xerox copy before the Competent Authority and Additional Collector and all other offences connected with these offences including conspirary and such other offences which may be unearthed during investigation in this regard.

The investigation should be expeditiously done and completed, preferably within one month from the date of the receipt of this order. On investigation being completed, the CBI will submit charge-sheet against those who, according to its investigation, ought to be booked in connection with such offences as are found to have been committed. The CBI will have full access to the record of this petition and the orders made in it, as also to the file of Appeal No. 141/94 of the ULT produced before this Court by Mr. N.C.Dave, the then ULT under his letter dated 26th August, 1997. The CBI will have full authority to take custody of the original documents from Mr. N.P.Nair, Section Officer, who has been directed to keep the custody of the entire record of this petition. They will also have full authority to make all the necessary investigation from the High Court registry. The CBI will be free to proceed against all the persons involved including anyone who may be found to be involved from the Registry, in accordance with law;

2. The State Government will inform the CBI of this order and a copy of this order will also be despatched forthwith to the CBI by the Registry;
3. The State Government will issue necessary orders within one week from today to all the concerned offices, not to rely upon a xerox copy of a decision of the High Court and to insist on a certified copy thereof, which is issued by the High Court under Chapter XIII of the Gujarat High Court Rules, 1993 and as per Section 76 of the Indian Evidence Act, 1872. Instructions should also be issued to take immediate action against those who may be found to have indulged in similar mal-practices;
4. The State Government will independently enquire into such cases and take suitable action to

ensure that such forgeries are detected and Departmental action is taken if any State employees are shown to be involved;

5. The Registrar has reported that the original papers of this petition are not traceable despite best efforts. It is directed that a regular Departmental enquiry should be initiated against the members of the staff of the registry, of whatever rank, who are found to be prima-facie responsible for the custody of these papers and who have not been able to account for their loss. Such an enquiry should be instituted within two weeks from today.
6. Enquiry should also be initiated into the prima-facie finding mentioned in the report by the Registrar that the computer is not furnishing information regarding the final hearing board of Hon'ble Mr. Justice A.N. Divecha, of 18.9.95 because there was over-writing in the computer as reported to him. The learned Government Pleader, in this regard, has shown the original register maintained by his office, which indicate that this petition Special Civil Application No. 3322/94 was listed on 18.9.95 before Hon'ble Mr. Justice A.N. Divecha, at serial No. 164. Departmental action should also be taken against any person who is prima-facie responsible for this lapse of the relevant computer data being overwritten and the registry not being able to retrieve it. This action should also be expeditiously taken.
7. The Registrar and the Joint Registrar who is in charge of judicial Department are directed to expeditiously enquire into similar other instances of fake orders made in the names of other Hon'ble Judges of this Court as per the statement showing 14 fake orders prepared by the learned Law Officer Mr. Patel as stated by him in Court, and take necessary Departmental and other action, if any of the members of the staff are found to be prima-facie involved in such forgeries or other malpractices, after obtaining necessary orders from the Hon'ble the Chief Justice;

* /Mohandas